IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-12-2005

CORAM:

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM,

THE HONOURABLE MR.JUSTICE T.V.MASILAMANI
and
THE HONOURABLE MR.JUSTICE S.R.SINGHARAVELU

W.P.Nos.13354 to 13358, 13772, 14028, 14295, 15193 and 16845 of 2001; 32303 of 2002; and 26396, 30108, 29407/2004, 24287/2005, 29961, 29390, 29959, 29960, 21288, 32513, 29618, 29266, 26593, 25105, 30845, 34105, 25082, 28940, 30090 and 31167 of 2004

W.P.M.P.Nos. 30989 to 30993, 20372, 20802, 20201, 24968 and 24969 of 2001; 46961 of 2002; and 36690, 41228, 30483, 35151, 36542 and 37766 of 2004

W.V.M.P.Nos. 591 and 528 to 530 of 2005

K.Nithiyanantham ..Petitioner in WP.13354/2001.

M.Lakshmanan ..Petitioner in WP 13355/2001

K.Ramasamy ..Petitioner in WP 13356/2001

S.Balan ..Petitioner in WP 13357/2001

V.M.Janakiraman ..Petitioner in WP 13358/2001

A.Karuppannan ..Petitioner in WP 13772/2001

J.Moorthy ..Petitioner in WP 14028/2001

S.Vijayakumar ..Petitioner in WP 14295/2001

N.Panneer Selvam ..Petitioner in WP 15193/2001

S.Thangavel ..Petitioner in WP 16845/2001

V.Sundaramurthy ..Petitioner in WP 32303/2002

N.Ganapathy ..Petitioner in WP 26396/2004

P.Rajandran ..Petitioner in WP 30108/2004

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K.P.Aruchamy ..Petitioner in WP 29407/2004

M.Madheswaran ..Petitioner in WP 24287/2005

S.M.Venkidusamy ..Petitioner in WP 29961/2004

K.Balan ..Petitioner in WP 29390/2004

S.Mohanasundaram ..Petitioner in WP 29959/2004

K.Murugesan ..Petitioner in WP 29960/2004

G.Murugesan ..Petitioner in WP 21288/2004

P.Umapathy ..Petitioner in WP 32513/2004

S.Velusamy ..Petitioner in WP 29618/2004

R.Rasappan ..Petitioner in WP 29266/2004

S.Krishnamoorthy ..Petitioner in WP 26593/2004

V.M.Velmurugan ..Petitioner in WP 25105/2004

G.Chinnasamy ..Petitioner in WP 30845/2004

K.R.Nallasamy ..Petitioner in WP 34105/2004

K.Ramasamy ..Petitioner in WP 25082/2004

R.Manickam ..Petitioner in WP 28940/2004

P.Raman ..Petitioner in WP 30090/2004

1.G.Baskaran
2.C.Rajagopal
3.R.Nallathambi ..Petitioners 1 to 3 in WP 31167/2004

vs.

1. State of Tamil Nadu,
   Rep. by its Secretary to Government,
   Law Department, Fort. St. George,
   Chennai-600 009.

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2. The Director of Handlooms & Textiles,
Kuralagam,
Chennai-600 108. ..Respondents 1 and 2 in WP.Nos. 13354 to 13358/2001. 1st Respondent in WP.13772/2001. Respondents 1 and 2 in WP.14028, 14295, 15193, 26296, 30108, 29407/2004, 24287/2005, 29961, 29390, 29959, 29960 and 21288/2004.

3. Aringnar Anna Silk Handlooms Weavers
Co-operative Production & Sales
Society Limited, N.K.H-1,
498-499, Gandhi Road,
Kancheepuram. .. 3rd Respondent in WP.13354/01

1.Kancheepuram Tiruvalluvar Silk
Handlooms Weavers Co-operative
Production & Sales Society Limited
N.G.2054, 311/217, Gandhi Road,
Kancheepuram. ..R3 in WP 13355/2001

2.Kancheepuram Silk
Handlooms Weavers Co-operative
Production & Sales Society Limited
VT.No.G.1099,443 Gandhi Road,
Kancheepuram. ..R3 in WP 13356/2001

3.Kancheepuram Dr.Kalaingnar
Karunanidhi Silk Handlooms
Weavers Co-operative Production
& Sales Society Limited,
K-H-4 88-89, Gandhi Road,
Kancheepuram. ..R3 in WP 13357/2001

4.Kancheepuram Murugan Silk
Handloom Weavers Co-operative
Production and Sales Society Limited
NG 1653, Door No.79, Gandhi Road,
Kancheepuram. ..R3 in WP 13358/2001

5.2) State by its Secretary to Govt.
Housing and Urban Development Dept.,
Fort St. George, Chennai 600 009.

3) The Registrar of Co-operative
Societies (Housing) Adyar,
Chennai 20.

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4) Erode Co-operative Housing
Society Ltd., No.9782,
No.54, Balasubbarayalu Street,
Erode 638 001.
..Respondents 2 to 4 in WP
13772/2001 RR 2 & 3 in WP
14295/2001

6.3. The Deputy Director of Handlooms'and
Textiles, Kancheepuram.

4.Kancheepuram Vallalar Silk
Handlooms Weavers Co-operative
Production & Sales Society Limited
K.H.54, 133, A & B, Gandhi Road,
Kancheepuram 631 502 ..RR3 & 4 in WP 14028/2001

7.Dr. Ambedkar Salem city Co-op.
House Building Society Ltd.,
No.S.1523,No.50, Causway Street
Gugai, Salem -6,
Rep. By its Special Officer. ..R4 in WP 14295/2001

8.The Thirubuvanam Silk Handloom
Weavers Co-operative Production
and Sale Society Ltd., 2.322
Thirubuvanam represented by its
Special Officer. ..R3 in WP 15193/2001

1. The Secretary to Government of Tamilnadu,
Department of Co-operation Food and
Consumer Protection,
Fort St. George,
Chennai.9

2. The Registrar of Co-operative Societies
NVN Maaligai, Kilpauk, Chennai-10

3. The Joint Registrar of Co-operative
Societies, Officer of the Joint Registrar
of Co-operative Societies, Karungalpalayam,
Erode District.

4. The Deputy Registrar of Co-operative
Societies, Office of the Registrar of
Cooperative Societies, Karungalpalayam
Erode District.

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5. The Special Officer A.A. 209
Erasinampalayam Primary Agriculture
Co-operative Bank, Erasinampalayam
Mulanoor , Erode District.

R5 impleaded as per order of Court
dated 12.11.2001 in W.P.M.P.31897/2001 ... RR1 to 5 in
W.P.16845/2001

1. The State of Tamilnadu rep by its
Secretary to Government,
Department of Consumer
Food and Cooperation, Madras -9.

2. The Joint Registrar/ Managing Director,
The Erode District
Consumers Co-operative Wholesale
Stores Ltd., No.124.A
Perundurai Road, Erode.11

3. The Special Officer,
Chinthamani,
A - Unit of the Erode District,
Consumers Co-operative Wholesale
Stores Ltd., Erode. ... RR1 To 3 in
W.P.32303/2002

3. The Assistant Director of Handlooms
& Textiles, Coimbatore - 641 011

4. No. CH-106 Palladam Powerloom
Weaver Co-operative Production & sale
Society Ltd., rep by its Special Officer
No.6, Trichy Road, Palladam,
Coimbatore - 641 664. ... RR3 & 4 in
W.P.26396/2004 &
R3 in W.P.30108/2004
R3 in W.P.29407/2004
R3 in W.P.29961/2004
R3 in W.P.29390/2004
R3 in W.P.29960/2004
R3 in W.P.21288/2004

No.CH.12 Somanur Powerloom Weaver
Co-operative Production & Sale Society Ltd.,
rep by its Special Officer, No.79
Murugan Rice Mill Compound Main road,
Somanur, Coimbatore 641 668. ... R4 in W.P.30108/2004

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No.CH.126 Sulur Powerloom
Weaver Cooperative Production &
Sale Society represented by its
Special Officer
No.232, Trichy Road,
Sulur, Coimbatore ... R4 in W.P.29407/2004

The Assistant Director of Handlooms
& Textiles, 486, Bhavani Road,
Erode District

No.T.H.95, Pallaipalayam Powerloom
Weavers Cooperative P & S Society Ltd,
rep by its Special Officer,
No.209, R.S. Road,
Pallaipalayam, Namakkal District 638 006. ... RR 3 & 4 in
W.P.24287/2005
R3 in W.P.29959/2004

No.CH.174, Sri Bhagavathy Powerloom
Weaver Cooperative Production & sale
Society Ltd rep by its Special Officer,
Kalivelampatti, Kalvatti Thottam,
Palladam, Coimbatore 641 664. ... R4 in
W.P.29961/2004

No.CH.140, Aringar Anna Powerloom
Weaver Cooperative Production & sale
Society Ltd.,
rep.by its Special Officer
Main Road, Kaipalayam, Coimbatore District ... R4 in
W.P.29390/2004

4. No.EH.186 Sivagiri Velavan Powerloom
Weaver Co-operative Production & sale
Society Ltd., rep by its Special Officer,
No.4/135, Nall Road, Ganapathipalayam Po
Erode District 638 153

5. L.P. Balasubramanian
6. P. Sellappan
7. K. Murugesan
RR 5 to 7 impleaded as per
order dated 16.11.2004 by AKJ
in WMPs 38135, 38054 & 38617
of 2004 respectively ... RR4 to 7 in
W.P.29959/2004

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No.CH.143, Somanur Thiruvalluvar
Powerloom Weaver Cooperative Production
& sale Society Ltd., rep.by its Special
Officer, Somanur Main Road, Somanur
Coimbatore ... R4 in W.P.29960/2004

The Special Officer,
Inchipatti Powerlooms Weavers Cooperative
Production and sales Society Ltd.,
No.CH.137, Samalapuram 641 663
Palladam Taluk, Coimbatore District. ... R4 in W.P.21288/2004

1. The Assistant Director of
Handlooms and Textiles
Saibaba Colony
2nd Cross Street,
Bharathi Park, Coimbatore 11

2. The Special Officer,
Kongunadu Powerloom
Weavers Cooperative Production
and sales Society Ltd.,
No.C.H.136, Merlin Street,
Kalipalayam, Palladam Taluk,
Coimbatore District. ... RR1 and 2 in
W.P.32513/2004
R1 in W.P.29618/2004
R1 in W.P.29266/2004
R1 in W.P.26593/2004
R1 in W.P.30845/2004

2. The Special Officer,
Thiyaki Kumaran Powerloom
Weavers Cooperative
Production and Sales Society Ltd.,
No.C.H.132 Ayyampalayam,
Samalapuram 641 663
Coimbatore District ... R2 in W.P.29618/2004

2. The Special Officer, Echipatti
Powerloom Weavers Production and
Sales Society Ltd., No.C.H.137
1/14C, Eswaran Koil Street,
Samalapuram 641 663
Coimbatore District ... R2 in W.P.29266
& 26593 and 30845/2004

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1. The Assistant Director of Handlooms
and Textiles, 426 Bhavani Main Road,
Veerappanchatram,
Erode 4

The Special Officer
EH 187 Thanthai Periyar Powerloom
Weavers Cooperative Production and
sales Society Ltd.,
D.No.35 Kongu Nagar,
1st Street,
Municipal Colony, Erode 4 ... RR1 and 2 in
W.P.25105/2004
R1 in W.P.34105/2004
R1 in W.P.25082/2004
R1 in W.P.28940/2004
R1 in W.P.30090/2004
and R1 in W.P.31167/2004

The Special Officer
E.H. NO. 165 Sakthi Power Loom
Weavers Cooperative Productive
and Sales Society Ltd
No.269 Bhavani Main Road
Perundurai, Erode District ... R2 in WP 34105/2004

The Special Officer
Erode Powerloom Weavers Production
and Sales Society Ltd, NO.E.H. 147
D.No.48 Chozhan Street
Veerappanchatram, Erode 4 ... R2 in WP 25082/2004

The Special Officer
E.H. 191 Ashokapuram Power loom
Weavers Cooperative Production
and Sales Society Ltd
D.NO.40/1 Dheeran Chinnamalai
Street, Ashokapuram, Veerappanchatram,
Erode – 4 ...R2 in WP NO. 28940/2004

The Special Officer
EH 155, Kasipalayam Adidravidar
Powerloom Weavers Cooperative
Society Ltd, K.K. Nagar
Kasipalayam Erode 638 009 ... R2 in WP 30090/2004

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The Special Officer
EH, 185, Aringar Anna Powerloom
Weavers Cooperative Society Ltd
Veerappanchatram, Erode 4 ... R2 in WP 31167/2004

Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Declaration,

1. Declaring that the Amendment Act 12/2001 is arbitrary, unreasonable ultra-virus, void ab-initio and unconstitutional in so far as the Petitioner is concerned (WP 13354 to 13358/2001) prayer amended as per order of court dated 12.11.2001 in WMP NO. 30989/2001 to 30993 of 2001.

2. Declaring the Tamil Nadu Ordinance NO.3 of 2001 dated 12.06.2001 published in Part IV, Sec. 2 of Government Gazette No.403, Dated 12.06.2001 is ultravies and void abinito in so far to the petitioner 29960/2004 WP 29961, 29390, 29959/2004 (WP NO. 13772, 14295/2001) 26396/2004, 30108/2004, 29407/2004)

3. Declaring that the Tamil Nadu Ordinance No.3 of 2001 is arbitrarily unreasonable Ultra-virus to the Constitution of India void ab-initio and unconditional in so far as petitioner is concerned. (WP 14028/2001, 15193/2001

4. Writ of Certiorarifed Mandamus calling for the records relating to the Act 12 of 2001 which has been inserted as section 89-A in the Tamil Nadu Cooperative Societies as Sec 89-A quash the same and direct the respondents not to admit new Members or remove 'existing members' in the A.A. 209 Erasimampalayam Primary Agricultural Cooperative Bank Ltd, Erode District (WP 16845/2001)

5. Writ of Mandamus forbearing the respondents from enrolling new members in the Erode District Consumers Cooperative Whole Sale Stores Limited Erode-11 as per order (WP 32303/2002)

6. Declaring section 89A of Tamil Nadu Co-operative Societies Act is ultra virus invalid arbitrary void ab-initio as per order (WP 24287/2005)

7. Declaring that the Tamil Nadu Co-operative Societies (Amendment) Act 2001 (Tamil Nadu Act 12 of 2001) is arbitrarily unreasonable ultra-virus to the Constitution of India void ab-initio as unconstitutional in so far as the petitioner is concerned (WP 21288/2004)

8. Writ of Mandamus forbearing the respondents from enrolling new members in the Kongunadu Powerloom Weavers Cooperative Production and Sales Society Ltd. No.CH 136 Merlin Street, Kalipalayam Palladam Taluk, Coimbatore District (WP 32513/2004)

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9. Writ of Mandamus forbearing the respondents from enrolling new members in the Thiyaki Kumaran Powerloom Weavers Cooperative Production and Sales Society Ltd No.CH 132 Ayyampalayam Somalapuram, 641 663, Coimbatore District (WP 29618/2004)

10. Writ of Mandamus forbearing the respondents from enrolling new members in Echipatti Powerloom Weavers Production and Sales Society Ltd., No. CH 137, 1/14-C Eswaran Kovil Street, Somalapuram 641 663 Coimbatore District by considering the petitioners representation dated 14.09.2004 (WP 29266, 26593, 30845/2004)

11. Writ of Mandamus forbearing the respondents from enrolling new members in E.H.187, Thanthai Periyar Powerloom Weavers Cooperative Production and Sales Society Ltd. D.No.35, Kongu Nagar 1st Street, Municipal Colony, Erode-4 by considering the petitioner's representation dated 27.8.2004 (WP.No.25105/2004).

12. Writ of Mandamus forbearing the respondents from enrolling new members in EH.165, Sakthi Powerloom Weavers Cooperative Production and Sales Society Ltd. 269, Bhavani Main Road, Perundurai, Perundurai Taluk, Erode District (WP.No.34105/2004).

13. Writ of Mandamus forbearing the respondents from enrolling new members in Erode Powerloom Weavers Production and Sales Society Ltd. EH.147, Veerappanchatram, Erode by considering the petitioner's representation dated 27.8.2004 (WP.No.25082/2004).

14. Writ of Mandamus forbearing the respondents from enrolling new members in EH.191, Ashokapuram Powerloom Weavers Co-operative Production and Sales Society Ltd. D.No.40/1, Deeran Chinnamalai Street, Ashokapuram, Veerappanchatram, Erode-4 by considering the petitioner's representation dated 4.10.2004 (WP.No.28940/2004).

Writ of Mandamus forbearing the respondents from enrolling new members in EH.155, Kasipalayam Adidravidar Powerloom Weavers Co-operative Society Ltd., Kasipalayam, Erode-9 by considering the petitioner's representation dated 12.10.2004 (WP.30090/2004).

Writ of Mandamus forbearing the respondents from enrolling new members in EH.185, Arignar Anna Powerloom Weavers Co-operative Society Ltd., Veerappanchatram, Erode-4 by considering the petitioner's representation dated 16.10.2004 (WP.31167/2004)

For Petitioners in W.P.Nos.
13354 to 13358 of 2001 : Mr.M.Venkatachalapathy,S.C.
for Mr.M.Sriram

For Petitioners in W.P.Nos.

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13772 and 14295 of 2001 : Mr.C.Prakasam

For Petitioner in W.P.No.
15193 of 2001 : Mr.R.Shanmugasundaram, S.C.
for Mr.S.Ravi

For Petitioner in W.P.No.
16845 of 2001 : Ms.G.R.Indra

For Petitioners in W.P.Nos.
14028 of 2001 and
21288 of 2004 : Mr.G.Devadoss

For Petitioners in W.P.Nos.
32302 of 2002 and 32513,
29618, 29266, 26593, 25105,
30845, 34105, 25082, 28940,
30090 and 31167 of 2004 : Mr.N.Manokaran

For Petitioners in W.P.Nos.
26396, 30108, 29407, 24287,
29961, 29390, 29959 and
29960 of 2004 : Mr.G.Ethirajulu

For Respondents : Mr.N.R.Chandran, A.G.
Mr.R.Muthukumarasamy,
Addl.A.G.
Mr.V.Raghupathi, G.P.
Mr.M.S.Palanisamy, AGP
Mr.P.S.Sivashanmugasundaram
Mr.P.S.Jayakumar
Mr.M.Mahalingam
Mr.C.Ramesh
Mr.K.M.Vijayan,S.C.for
Mr.A.Kumaraguru
Ms.L.Arivukarasi
Mr.S.Gomathinayagam

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C O M M O N O R D E R

M.KARPAGAVINAYAGAM, J.

The question referred for consideration of this Full Bench is as follows:

"Whether Section 89-A of the Tamil Nadu Co-operative Societies Act, 1983 introduced through the amendment Act 12 of 2001 conferring powers on the Special Officer to admit new members in the Co-operative Society is arbitrary, unreasonable, ultra vires and

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unconstitutional, as it is the usurpation of judicial power?

2. Raising the said question several writ petitions had been filed before the learned single Judge. After hearing the counsel for the parties, the learned single Judge on the basis of the Supreme Court judgment in Kattappan's case (A.I.R.2000 S.C.2378), held that the Special Officer has no power to admit the new members as it would affect the composition of the society and fundamental rights of the members and as such, the legislature would be incompetent to give statutory recognition to such a power being exercised by the Special Officer. However, the learned single Judge on the basis of the observation made by the Division Bench of this Court in W.P.Nos.7442 of 1992 etc. dated 21.12.1995, expressing that the Special Officer has power to enrol new members, thought it fit to refer to the larger Bench by the order dated 9.4.2002. Accordingly, the Hon'ble Chief Justice ordered for hearing by this Full Bench.

3. The main contentions urged by the counsel for the petitioners, while challenging the introduction of Section 89A of the Co-operative Societies Act 1983, before this Full Bench are two-fold. They are as follows:

1) The Supreme Court in Shantharaj's case reported in A.I.R.1997 S.C.2925 and Kuttappan's case reported in A.I.R.2000 S.C.2378 had declared and laid down that the enrolment of new members in the Co-operative Society by the Special Officers would be detrimental to the democratic process of the Society and such a power should be exercised by an Elected Committee only, as the Co-operative Society is expected to function in a democratic manner. Therefore, the introduction of new Section 89A vesting the discretion on the Special Officers to enrol new members in the Society would be violative of law laid down by the Supreme Court, as the Legislature cannot pass a law in an attempt to validate an unconstitutional action.

2) Article 19(1)(c) of the Constitution guarantees the right to form a Society. The right guaranteed under Article 19(1)(c) not only includes the right to start an association, but also continue it, refuse to be a member of an Association, if he desires. It also includes the right that the composition of a society shall not be altered by law as to introduce the members other than who voluntarily join the Society, without the consent of members of the original Society. It is true that the fundamental right under Article 19(1)(c) is not an absolute right and can be reasonably restricted on the grounds enumerated in Clause (4) of Article 19(1)(c). These restrictions can be made by enacting law only in the interest of sovereignty and integrity of India or public order or morality. The Clause (4) of Article 19 would not apply to the present case as Section 89(A) is not saved in any of the grounds of Clause (4) of Article 19. Thus, this unreasonableness is in violation of Article 19(1)(c) and not saved under Clause (4) of Article 19.

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4. The counsel for the petitioners would cite the following authorities dealing with the powers of the Legislature which cannot pass a law which would be violative to the law declared by the Court:

(1) 1969(2)S.C.C.283(P.C.MILLS LTD. v. BROACH BOROUGH MUNICIPALITY);

(2) A.I.R.1981 S.C.271 (WAMAN RAO v. UNION OF INDIA);

(3) 1999(8) Supreme 351 (I.R.COELHO v. STATE OF TAMIL NADU);

(4) J.T.2001(6) S.C.183 (DISTRICT MINING OFFICER v. TATA IRON & STEEL CO.).

5. The counsel for the petitioners with regard to the second point in relation to the infringement of the fundamental right, would mainly rely upon the decision reported in A.I.R.1971 S.C.966 (DAMAYANTI v. UNION OF INDIA).

6. In reply to the above contentions, the counsel for the respondents would make the submissions, the gist of which is given below:

(1) In Shantharaj's case (A.I.R.1997 S.C. 2925) and Kuttappan's case (A.I.R.2000 S.C. 2378), the Supreme Court dealt with the scope and content of the power of the Special Officer appointed upon supersession of the Committee in terms of Sections 30 of the Karnataka Act and 32 of the Kerala Act. The Supreme Court pointed out that those provisions in Karnataka and Kerala Acts which are analogous to Sections 88(2) and 89(2) of the Tamil Nadu Act would not confer powers on the Special Officers or Administrative Officers to admit new members. In those cases, the Supreme Court had not dealt with the question as to whether the Act could make a provision empowering an Officer to enrol eligible members or as to whether such a provision is valid or not. The Tamil Nadu Legislature taking note of the observations of the Supreme Court while dealing with the power comprehended in the Karnataka and Kerala Acts which is similar to Sections 88(2) and 89(2), which would not enable the enrolment of new members, has thought it fit to enact the impugned provisions under Tamil Nadu Act empowering the Special Officer to enrol new members. Such enactments by Legislature taking note of the defect pointed out by the Supreme Court and rectifying the same is a well-known and valid principle as it is legally permissible for the Legislature by way of Revalidation Act to enable something which was decided by judgment of the Court and as such, the impugned provision is not an usurpation of judicial power.

2) The admission of a member of a Society is governed by a statute and by-laws of the Society under Section 21 of the Co-operative Societies Act. It is therefore there is no fundamental right in regulating the rights of the admission of members of any Society. Article 19(1)(c) would have no application to a Co-operative Society, which is a creature of a Statute. This is a body Corporate under Section 39. Therefore, the complaint of violation of Article 19(1)(c) is liable to be rejected.

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7. The counsel for the respondents would refer to the following authorities in order to show that it is open to the Legislature to pass a law to render judgments of Courts ineffective by rectifying the defects pointed out in the said judgments:

1) A.I.R. 1970 S.C.192 (SHRI P.C.MILLS v. BROACH MUNICIPALITY);
2) A.I.R. 1996 S.C. 1431 (INDIAN ALUMINIUM CO. v. STATE OF KERALA);
3) A.I.R. 1997 S.C.1815 (STATE OF TAMIL NADU v. M/S.AROORAN SUGARS LTD.);
4) A.I.R.1997 S.C.3127 (S.S.BOLA v. B.D.SARDANA);
5) A.I.R.2003 S.C.1266 (WELFARE ASSOCN. A.R.P., MAHARASHTRA v. RANJIT P.GOHIL);
6) A.I.R.2003S.C.2236 (BAKHTAWAR TRUST v. M.D.NARAYAN).

8. The counsel for the respondents would cite the following authorities in order to show that the exercise of fundamental right as a member would not apply to the Co-operative Society which is a body corporate:

1) 1997 (3) S.C.C. 681 (STATE OF U.P. v. C.O.D. CHHEOKI EMPLOYEES' COOP. SOCIETY LTD.);
2) 2005 (5) S.C.C. 632 (ZORASTRIAN CO-OPERATIVE HOUSING SOCIETY LTD. v. DISTRICT REGISTRAR, COOP. SOCIETIES (URBAN);
3) A.I.R.1985 S.C.973 (DAMAN SINGH v. STATE OF PUNJAB);
4) A.I.R.1997 S.C.1413 (STATE OF U.P. v. C.O.D.CHHEOKI EMPLOYEES' CO-OP. SOCIETY LTD.);
5) A.I.R.2000 S.C.2306 (STATE OF BIHAR v. KAMESHWAR PRASAD SINGH).

9. We have heard the learned counsel for the parties who argued at length and given our anxious consideration to their rival contentions. We have also perused the written submissions filed by Mr.M.Venkatachalapathy, learned senior counsel, Mr.R.Shanmugasundaram, learned senior counsel, Mr.G.Devadoss and Mr.N.Manokaran, learned counsel on behalf of the petitioners and the written submissions in reply filed by Mr.N.R.Chandran, learned Advocate General, Mr.R.Muthukumarasamy, learned Additional Advocate General, Mr.K.M.Vijayan, learned senior counsel and Mr.S.Gomathinayagam, learned counsel for the respondents.

10. On a careful consideration of their oral and written submissions raising two major points, it is clear that both these points would overlap each other which may require a combined analysis.

11. The main aspect of the matter which revolves around is with reference to the disturbance to the democratic set up of the Co-operative Society affecting the rights of General Body of the Society by

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introduction of Section 89A, as against the law declared by the Supreme Court.

12. Let us now first deal with the alleged usurpation of the judicial power by reason of the introduction of Section 89A of the Tamil Nadu Co-operative Societies Act.

13. With reference to the above aspect, it would be worthwhile to refer to some of the decisions of the Supreme Court:

(i) In A.I.R.1994 S.C.1 (STATE OF HARYANA v. KARNAL CO-OP. F.S.LIMITED), it is held as follows:

> "A Legislature while has the legislative power to render ineffective the earlier judicial decisions, by removing or altering or neutralising the legal basis in the unamended law on which such decisions were founded, even retrospectively, it does not have the power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid or not binding for such power if exercised would not be a legislative power but a judicial power which cannot be encroached upon by a Legislature under our Constitution."

(ii) In AIR 1996 SC 1431 (INDIAN ALUMINIUM CO. v. STATE OF KERALA), it is observed thus:

> "In exercising legislative power, the Legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the Court, if those conditions had existed at the time of declaring the law as invalid."

14. Through the above observations, it is made clear that any law made by the Legislature declaring the earlier judicial decision ineffective or invalid would not be a valid legislative power as it would amount to encroaching upon the judicial power by Legislature. Of course, it is true that the Supreme Court in various decisions referred to above held that it is open to the Legislature to pass a law to render judgments of Courts ineffective by rectifying the defects pointed out in the said judgments.

15. In the light of the above settled law, the question now arises is whether the judgment of the Supreme Court in Kuttappan's case would merely point out the defects contained in the Act or give any ratio decidendi declaring that there shall be no vesting of the powers on the Special Officers to enrol new members in the Co-operative Society.

16. While analysing the above question, it would be proper to refer to

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the relevant observation made by the Supreme Court in Kuttappan's case reported in AIR 2000 SC 2378, which is said to be 'ratio decidendi'. The same is as follows:

> "We may add that a Co-operative Society is expected to function in a democratic manner through an elected Committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected Committee rather than by an administrator or a Committee appointed by the Registrar while the Committee Management is under supersession."

17. According to the counsel for the petitioners, the above observation made by the Supreme Court is a ratio decidendi which indicates that the Co-operative Society is to function in a democratic manner through one elected Committee of Management and that Committee of Management alone is empowered to enrol new members and not by mere Administrator or Special Officer appointed by the Registrar as it would involve alteration of the composition of the Society itself.

18. On the other hand, it is contended by the counsel for the respondents that it is not a ratio decidendi. It is only an observation which points out to the absence of the provision relating to the powers of the Special Officer for appointing new members indicating the defect in the Act in the light of the facts and circumstances of that case, which compelled the Tamil Nadu Government to bring in an legislation to cure the said defect conferring powers on the Special Officers to admit new members for an interregnum period under Section 89A.

19. While considering the issue in question, it would be worthwhile to refer to various judgments of the High Courts and the Supreme Court, considering the said question chronologically, which culminated in the pronouncement of the Supreme Court in Kuttappan's case (A.I.R. 2000 S.C. 2378):

(i) In GEORGE v. JOINT REGISTRAR (1985 K.L.T. 836), on 09.08.1985, a Division Bench of the Kerala High Court, while dealing with the Kerala Act, held that the Administrator of the Society will have the power to admit new members.

(ii) Another Division Bench of the Karnataka High Court, in the judgment in K.SHANTHARAJ v. M.L.NAGARAJ (1998 (2) K.L.J.248), which was rendered on 17.03.1997, distinguished the judgment of the Kerala High Court on the basis of the different expressions used in the Karnataka Act and the Kerala Act, namely, "power" and "function", as exercisable by the Administrative Officer and held that inasmuch as the Karnataka Act did not vest both the power and functions of the Board of Directors on the Administrative Officers and as such, the Administrative Officer had no authority to enrol new members and that he can only manage the routine day-to-day affairs of the society.

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(iii) On appeal against the said judgment, the Supreme Court confirmed the judgment of the Karnataka High Court in K.SHANTHARAJ v. M.L.NAGARAJ (A.I.R.1997 S.C.2925) on 09.05.1997 itself.

(iv) Thereafter, when the similar issue came up before the Kerala High Court, the matter was referred to a Full Bench in view of Shantharaj's case in the Supreme Court and ultimately, the Full Bench of the Kerala High Court in HASAN v. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (1998 (2) K.L.T.746), on 28.08.1998, on the strength of the Supreme Court judgment in Shantaraj's case, held that the earlier decision of the Division Bench reported in 1985 K.L.T.836 was impliedly overruled and consequently held that the Administrator will have no power to enrol new members in the Co-operative Society.

(v) The very same judgment was taken to the Supreme Court and the Supreme Court, in the case of JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES v. T.A.KUTTAPPAN (A.I.R. 2000 S.C. 2378), on 09.05.2000, confirmed the Full Bench judgment, endorsing the view of the SHANTARAJ's case and held that the Administrative Officer or Special Officer, either under the Karnataka Act or under the Kerala Act, cannot have powers to enrol new members in the Co-operative Society.

20. In the light of the above legal and factual background, the question raised in this matter is, whether Section 89-A of the Act, which has now been inserted enabling the Special Officer to enrol new members, is usurpation of judicial power making the section invalid?

21. It is not debated that it is held in the Karnataka High Court judgment in K.SHANTHARAJ v. M.L.NAGARAJ (1998 (2) K.L.J.248), which was confirmed by the Supreme Court in A.I.R.1997 S.C.2925, and the Full Bench decision of the Kerala High Court in HASAN v. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (1998 (2) K.L.T.746), having considered the various povisions under the Kerala and Karnataka Acts, it is held that the Special Officers have not been vested with the power to enrol new members. As such, these decisions would deal with the legal situation under the Kerala and Karnataka Acts, whereunder there is no specific provision empowering the Special Officers to enrol new members. In other words, there is no law declared nor ratio decided in the above cases that the powers to enrol new members shall not be vested with Administrator or Special Officer appointed by the Registrar. But, in Kuttappan's case (A.I.R.2000 S.C.2378), according to the learned senior counsel for the petitioners, law has been declared that in Co-operative Societies, the Special Officers cannot have powers to enrol new members.

22. However, the learned counsel for the respondents would submit that in all the above cases including the Kuttappan's case, the Supreme Court merely pointed out that there is no power vested with the Special Officers to enrol new members under the provisions of the Kerala and

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Karnataka Acts. Taking note of the defect pointed out by the Supreme Court, the Tamil Nadu Legislature thought it fit to enact the impugned provisions under the Tamil Nadu Act, empowering the Special Officer to enrol new members. In short, the submission on behalf of the respondents that the observation made by the Supreme Court is not a ratio decidendi and on the other hand, the issue was dealt with by the Supreme Court only in the light of the absence of the provision relating to the powers of the Special Officer to enrol new members and as such, the Supreme Court did not consider the question as to whether the Legislature could make a provision, empowering an officer to enrol eligible members or not or as to whether such a provision is valid or not.

23. In the light of the above stand taken by the learned counsel for the respondents, it is now appropriate to deal with the question, whether the observation made by the Supreme Court in Kuttappan's case would relate to the factual situation in the facts and circumstances of that case or it is a ratio decidendi, which would amount to declaration of law on the issue.

24. Let us now see the factual background given in Kuttappan's case reported in A.I.R.2000 S.C. 2378 :

"The Registrar of the Kerala Co-operative Societies, under Section 32 of the Kerala Co-operative Societies Act, superseded the Committee of Management and appointed an administrator for management of the society. When the administrator wanted to enrol new members in the society, the same was objected to, on the ground that the administrator is only expected to carry on day-to-day affairs of the society and see that election is conducted. Therefore, the administrator or the committee appointed by the Registrar has no power to enrol new members. The matter was referred to the Full Bench. The Full Bench ultimately would hold, taking support of the decision in Shantharaj's case rendered by the Supreme Court reported in 1997 (6) SCC 37, that the admission of a member is not mere a "function" of the committee, but is a "power" of the committee to admit members or not as provided in bye-laws of the society and as such, the administrator or a Special Officer or a committee appointed by the Registrar has no power to enrol new members. The above decision was challenged in the Supreme Court. The Supreme Court, in JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES, KERALA v. T.A.KUTTAPPAN, (A.I.R.2000 SUPREME COURT 2378), taking into consideration the relevant provisions of the Kerala and Karnataka Acts, held that the administrator or a special officer, appointed by the Registrar, can exercise powers and functions only as may be required to the interests of the Co-operative Society and he should conduct elections as enjoined under law with the members as on the rolls and he is not vested with power to enrol new members of the society."

25. The actual finding by the Supreme Court in Kuttappan's case is as follows:

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"If we carefully analyse the provisions of the Act, it would be clear that the administrator or a Committee appointed while the Committee of Management of the Society under supersession cannot have the power to enrol new members and such a question ought not to be decided merely by indulging in an exercise on semantics in ascertaining the meaning of the expression have "power to exercise or any of the function...". Whether an authority is discharging a function or exercising a power will have to be ascertained with reference to the nature of the function or the power discharged or exercised in the background of the enactment. Often we do express that functions are discharged or powers exercised or vice versa depending upon the context of the duty or power enjoined under the law if the two expressions are inter-changeable. What is necessary to bear in mind is that nature of function or power exercised and not the manner in which it is done. Indeed this Court, while considering the provisions of Section 30-A of the Karnataka Act, which enabled a Special Officer appointed to exercise and perform all the powers and functions of the Committee of Management or any officer of the Co-operative Society (and not merely functions), to the view that the administrator or a special officer can exercise powers and functions only as may be required to the interests of the Co-operative Society. In that context, it was stated that he should conduct elections as enjoined under law, that is, he is to conduct elections with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the Society."

26. The perusal of the above wordings given by the Supreme Court in first portion of the paragraph 7 would indicate that the above finding has been given, while analysing the provisions of the Kerala Co-operative Societies Act. On that basis, it is now argued by the learned senior counsel for the respondents that the said observation was made by the Supreme Court in Kuttappan's case taking into consideration of the analysis of the relevant provisions of the respective Acts, namely Karnataka and Kerala Acts alone and as such, the above said observation cannot be taken as a ratio decidendi as it is only an obiter.

27. On the other hand, the learned senior counsel for the petitioners pointed out the other portion of paragraph 7 to show that it is not merely an obiter, but it is ratio decidendi.

28. Let us now quote those wordings contained in the end of paragraph 7 of the judgment of the Supreme Court making such declaration. The same is as follows :

> "7.... We may add that a Co-operative Society is expected to function in a democratic manner through an elected Committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected Committee rather than by an administrator or a

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Committee appointed by the Registrar while the Committee of Management is under supersession... What is of significance is that when the Committee of Management of the Co-operative Society commits any default or is negligent in the performance of the duties imposed under the Acts, rules and the bye-laws, which is prejudicial to the interest of the society, the same is superseded and an administrator or a Committee is imposed thereon. The duty of such a Committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this Court, only to bring on an even keel a ship which was in doldrums...."

29. If we make a thorough reading of the entire judgment including the last portion of the paragraph 7 of the Kuttappan's case, it is clear that the Supreme Court has not merely interpreted the provisions of the Kerala Act and Karnataka Act, but also declared a law giving out the ratio decidendi that the enrolment of new members by the administrator or the special officer would involve alteration of the composition of the society itself, which affects the object and scheme of the Act intending to establish the democratic set up in the Co-operative Societies.

30. As observed by the Supreme Court, whether an authority is discharging a function or exercising a power will have to be ascertained with reference to the nature of the function or the power discharged or exercised in the background of the enactment.

31. Let us now look into the preamble and relevant provisions of the Tamil Nadu Co-operative Societies Act, in order to know and understand the background, the scheme of the Act and the function of the Elected Board, in a democratic set up.

32. The preamble of the Act is as follows :

"WHEREAS it is expedient further to provide for an orderly development of the co-operative movement in accordance with co-operative principles such as open membership, democratic management, limited interest on capital, distribution of surplus based on patronage, provision for co-operative education and co-operation among co-operatives for the promotion of thrift, self-help and mutual aid among persons with common socio-economic needs so as to bring about improvement in agriculture and industry, better methods of production, better business and better living and for that purpose to amend and consolidate the law relating to co-operative societies in the State of Tamil Nadu."

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33. The above preamble would indicate that the Act has been introduced for an orderly development of the co-operative movement in accordance with co-operative principles such as democratic management and mutual aid among persons with common socio-economic needs.

34. As per Section 2 (16), "member" means a person joining in the application for the registration of a society and a person admitted to the membership after registration in accordance with the provisions of this Act, the rules and the by-laws and includes an associate member.

35. Section 2 (19) defines "officer", and it includes a president, vice-president, managing director, secretary, assistant secretary, member of board and any other person empowered under the rules or the by-laws to give directions in regard to the business of the registered society.

36. As per Rule 2(g), "general body" or "a meeting of the general body" means in relation to a society which has provided for the constitution of a representative general body under clause (b) of sub-section (1) of Section 32, such representative general body in respect of the powers exercisable by the representative general body or a meeting thereof.

37. Section 4 deals with the Society which has the object the promotion of the economic interests or general welfare of the members in accordance with the co-operative principles which may be registered under this Act with the limited or unlimited liability.

38. Section 8 deals with the application for registration of a society. Section 9 deals with the registration.

39. Section 21 deals with the qualification for membership of society. Under Section 21(1)(iv), any body of persons whether incorporated or not approved by the Government shall be eligible for admission. These members shall possess such further qualifications as may be specified in the rules or the by-laws. No individual shall be eligible for admission as a member of any financing bank or apex society. Every individual found to be eligible for admission under the provisions of this Act, the rules and the by-laws of the society shall be admitted by the Board as a member of the society.

40. The "board" is defined under Section 2(7). "Board" means the board of directors or the governing body of a registered society by whatever name called, to which the direction and control of the management of the affairs of the society is entrusted.

41. This board is elected by the general body as the governing body containing board of directors which is entrusted with the entire control of the management of the affairs of the society. This board may, while

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considering the application for admitting a member of society, refuse admission to individual, if found that there is a reason. The said reasons have to be recorded in the minutes of the meeting. The decision shall be communicated to the individual. After the admission, the Registrar if found that he is not eligible for admission may remove the said individual after giving a reasonable opportunity to him.

42. Section 23 deals with the disqualifications for membership of the society. Section 23 (1) (h) and Section 23 (2) (g) would indicate that the membership is not open to all, because the person who is connected with the principal object of the society alone is eligible to become a member of the society.

43. Section 32 deals with the general meetings. Section 32 (1) (a) provides that the ultimate authority of a registered society shall vest in the general body of its members and this clause would not affect the exercise by the board or any officer of a registered society of any power conferred on such board or such officer by this Act or the rules or the by-laws.

44. Section 88 provides for supersession of the board. Under Section 88 (1) (a), if the Registrar is of opinion that the board is not functioning properly or wilfully disobeys or wilfully fails to comply with any order or direction issued by the Registrar, after giving the board an opportunity of making its representations, by order in writing, he can supersede the board and appoint a Government servant as the special Officer to manage the affairs of the society for a specified period not exceeding one year.

45. Under Section 88 (2), where a special officer is appointed, the Registrar may appoint an advisory board to advise the special officer in such matters as may be specified by him. Under Section 88 (3), the special officer has power to exercise all or any of the functions of the board or of any officer of the society and to take such action as may be required in the interest of the society. Under Section 88 (5), the special officer shall arrange for the constitution of a new board in accordance with the provisions of this Act, so that the new board and the new members thereof could come into office at the expiry of the period of his appointment.

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46. Section 89 deals with the appointment of Special Officer in other circumstances. Where the term of office of the board has expired and a new board cannot be constituted, where the new board constituted fails to enter, or is prevented from entering upon office on the expiration of the term of office of the earlier board, where vacancies have arisen for any reason, the Registrar may appoint Special Officer for a specified period not exceeding six months to manage the affairs of the registered society pending the constitution of a new board.

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47. The reading of the Preamble, definition sections and other provisions would give the following deatils:

(i) The general body which constitutes the society has to be represented by an elected board in the democratic management. The elected board consists of board of directors being the governing body and is entrusted with a direction and control of the management of the affairs of the society.

(ii) An individual who wants to be a member of a society must be eligible for admission and he must possess qualification with reference to the principal object of the society. The elected board if found the individual eligible can admit and if found not eligible, can refuse admission by recording the reason. The membership is not open to all, because the person who is connected with the principal object alone is eligible to become a member of the society. The decision for refusal will have to be communicated to the said individual.

(iii) The ultimate authority of a Registrar of Society shall vest in the General Body of members, which elects the Board, which can exercise the power conferred on such Board to have a control of the entire management of the affairs of the Society. The Registrar, if he is of the opinion that the Board is not functioning properly, can supersede the Board and appoint a Government Servant as a Special Officer to manage the affairs of the Society for a specified period not exceeding one year. The said Special Officer has power to exercise the functions of the Board to take such action as may be required in the interest of the Society. Since he is appointed for a limited period, he shall arrange for the constitution of a new Board by conducting election before the expiry of his period of appointment.

(iv) The Registrar if found that the term of office of the board has expired and a new board cannot be constituted or the new board constituted fails to enter into office, can appoint the Government Servant as Special Officer for a specified period not exceeding six months to manage the affairs of the registered society.

(v) The Co-operative Societies are member owned and member controlled organisations and supreme authority in respect of their internal management vests in the general body of members.

48. Thus, the preamble and various sections of the Act which has been extracted above would indicate that the entire scheme of the Act envisages a democratic management in the administration of the Co-operative Societies and enrolment of members is a democratic function of the society, which can be exercised only by the General Body or the Elected Board, constituted by the General Body, for the said purpose under the by-laws, as contemplated under the Act and the appointment of Government Servant as Special Officer under Sections 88 and 89 is only for a limited period and after all it is only a stop gap arrangement to manage the

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affairs of the Society under the direct control of Registrar till the constitution of a new Board to be elected by the General Body within the said limited period.

49. The Co-operative Societies Act came into being in order to implement the democratic way of administration. The admission of members is the primary right of the society. In a democratic set up, it is the General Body/Executive Committee, which would alone have the power to admit new members, who satisfy the required criteria as per the by-laws of the society. The enrolment of members pertains to the change of very composition of the Society. The Special Officer cannot enter into any conflicting policy decision by admitting the new members without the consent of other members. The Special Officer is assigned with duty to administer the day-to-day administration for a limited period with a limited purpose.

50. Let us now see Section 89-A of the Act, the validity of which is challenged in this matter:

> "89-A. Power of Special Officer/Administrator to admit any individual as member.-- Notwithstanding anything contained in this Act or in any other law for the time being in force or in any judgment, decree or order of any court or other authority, the Special Officer appointed under sub-section (1) of section 88 or under sub-section (1) of section 89, or the Administrator appointed under sub-section (12) of section 33, as the case may be, shall have the power of exercising the functions of the Board under clause (i) of sub-section (2) of section 21, to admit, any individual eligible for admission, as a member of the society, in accordance with the provisions of section 21."

51. This has been introduced and inserted by the Act 12 of 2001 with effect from 12.06.2001. Through this provision, special powers have been conferred on the Special Officer appointed under Section 88 or 89 and the Administrator appointed under Section 33 to admit any individual eligible for admission, as a member of the society.

52. As indicated above, Section 88 provides for the appointment of Special Officer to manage the affairs of the society for a period not exceeding one year. Under Section 89, the Special Officer has been appointed for a period not exceeding six months to manage the affairs of the society. Both Sections 88 and 89 would provide for the powers to the Registrar to extend the period. Similarly, Section 33(12) provides for the powers to the Registrar to entrust the management of the affairs of the society to a Government servant as an administrator for a period not exceeding three years. Sections 33, 88 and 89 thus would make it clear that the appointment of a Government servant by the Registrar as Special Officer and Administrator is for a limited period to manage the affairs of the society till the elected board is constituted.

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53. There is no dispute in the fact that no powers have been conferred by the Act on the Administrator or the Special Officer when they being the Government servants are holding their respective position to enrol the new members. This is made clear in all the judgments referred to above.

54. According to the learned senior counsel appearing for the respondents, the new section has been introduced by the State Government mainly because of the judgment in Kuttappan's case (A.I.R.2000 S.C.2378) pointing out to the defect relating to the absence of the provisions empowering the Special Officer to enrol the new members and the Tamil Nadu Government for the purpose of rectifying the defect pointed out by the Supreme Court has thought it fit to enact the impugned Section 89-A and as such, it does not constitute the usurpation of judicial power.

55. Let us now see the object and reasons. The object for inserting Section 89-A of the Tamil Nadu Co-operative Societies Act reads as follows:

> "In order to provide opportunity to the eligible persons to become members of the registered Co-operative Societies during the period when the Special Officers or Administrators as the case may be, perform the functions of the board, the Government have decided to empower the Special Officers and Administrators, appointed under the Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983) to exercise the functions of the board under clause (i) of sub-section (2) of Section 21 to admit such eligible persons as members of the Societies in accordance with the provisions of Section 21 and to amend the said Act suitably for the above purpose. Accordingly, the Tamil Nadu Co-operative Societies (Amendment) Ordinance, 2001 (Tamil Nadu Ordinance 3 of 2001) was promulgated by the Governor on the 12th June 2001 and the same was published in the Tamil Nadu Government Gazette Extraordinary, dated the 12th June 2001."

56. Taking into consideration the said object and reason and in the light of the defect pointed out by the Supreme Court, it is contended by the learned senior counsel for the respondents that the introduction of this new section is perfectly valid as the State Government is competent to legislate in the above subject covered by entry 32 List II of the VII Schedule to the Constitution.

57. This Court in order to verify the real object for which this new section has been introduced, called for the original records from the Government. On perusal of the Note for Circulation, it is found that the Government decided to introduce Section 89-A for some other reason. The relevant paragraph of the Note for Circulation is given below:

> "In G.O.(Ms) No.205, Cooperation, Food and Consumer Protection Department, dated 25-5-2001, Special Officers were appointed in most of the Cooperative Societies in the State. In addition, in some societies, Administrators have already appointed under Section 33(12) of the said Act. The Government have also ordered that election to the

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Primary Cooperative Societies be conducted in September 2001. The affairs of the Board of Management of the Societies are now managed by the Special Officers and Administrators. It has been brought to notice of the Government that many individuals who are eligible for admission as members of the registered Cooperative Societies in the State have not been given admission by the Board of Directors of the registered Cooperative Societies. Section 88(3) of the Tamil Nadu Cooperative Societies Act, 1983 has given powers to the Special Officers to exercise all or any of the functions of the Board or any officer of the Society to take such as may be required in the interests of the society. Similar power is given to the Administrators under Section 33(12) of the Act. This Department proposes to specifically clarify that the Special Officers and Administrators appointed under the Tamil Nadu Cooperative Societies Act, 1983 Tamil Nadu Act 30 of 1983) should also exercise the functions of the Board under clause (i) of sub-section (2) of Section 21 to admit any individual eligible for admission as a member of the society in accordance with the provisions of Section 21, in order to conduct fair elections to the Cooperative Societies after admission of eligible members and to amend the said Act suitably."

58. The reading of the above paragraph would clearly indicate that the Government took a decision to introduce a new section for empowering the Special Officers and Administrators to enrol new members as the Government has received reports that the many individuals who are eligible for admission have not been given admission to the Co-operative Societies by the Board of Directors of the Co-operative Societies. In order to admit those persons and thereafter to conduct elections for the Co-operative Societies, the Government has decided to empower the Special Officer/Administrator to enrol new members.

59. Thus, it is clear that the amendment has been introduced not with a purpose of curing the defect allegedly pointed out by the Supreme Court, but to admit the eligible members who have not been admitted by the Board of Directors elected by the General Body. This would mean that the democratic decision taken by the elected board to refuse the admission of the particular individual has not been allowed to be prevailed.

60. The admission of the new member and the examination with regard to the eligibility to be the member of the Society is entirely in the discretion of the Board of Directors elected by the General Body. These are all the matters which are properly left to the discretion of the elected board which due to its intimacy with men and matters of the locality would be well- equipped to assess the qualifications and disqualifications of an applicant.

61. If really the object is to provide opportunity to eligible persons to become members of a Co-operative Society during the period of Special Officer, the same can be achieved by the individuals, who have not been

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admitted, by forming themselves as a new society. There need not be a provision for the purpose of becoming a member of the existing Co-operative Society so as to restrict the rights of elected board taking decision with regard to the eligibility of the membership. Further, the impugned section restricts the General Body from exercising the right of not to be associated with persons whom they do not like.

62. It is not to be treated as a routine act. In any event, it is not to be treated as a matter of management. If it is not a matter of management, the Special Officer or the Administrator who is appointed temporarily to manage the affairs of the society in the interests of the society cannot be allowed to alter the composition and constitution of the society by conferring power to him for enrolling new members. This is a law declared by the Supreme Court in Kuttappan's case (A.I.R.2000 S.C.2378). Therefore, this cannot be said to be a re-validation. On the other hand, it is a clear usurpation of judicial power by which the law was declared that there should be no disturbance to the democratic set up or composition of the society.

63. Another ground is that the impugned provision is violative of Article 19(1)(c) of the Constitution of India. It was mainly argued on the strength of Damayanti's case (A.I.R.1971 S.C.966) that the enrolment of new members by the Special Officer without reference to the elected body is violative of Article 19(1)(c).

64. But, it is pointed out by the learned senior counsel for the respondents that the judgment reported in A.I.R.1971 S.C.966 (supra) relates to a Society which is not a body corporate and the said principles would not apply to the Co-oprative Society, which is a body corporate as laid down by the Supreme Court in A.I.R.1997 S.C.1413(supra) and A.I.R.2005 S.C.2306 (supra).

65. However, it is relevant to note that the Co-operative Society is a voluntary democratic organisation of persons whose key note is service without profit motive. It is an autonomous body, being constructed on the principle of democracy. The obligation on the part of the society is to provide jobs to its members, by evenly distributing the raw materials and getting back the products by paying the labour charges. With a view to uplift the members and to get rid of the monopoly in the trade by a group of individuals, the Co-operative Societies came into being and the basic principles of democratic way of administration came into being i.e., members elect the Board and the Board, on the guidelines and advice of the General Body, carries out the business. The entrustment of such power to the Special Officer or Administrator to enable him to admit new members would affect the very purpose of the Co-operative movement and the democratic right of the General Body of the Society.

66. The right guaranteed under Article 19(1)(c) not only includes the right to start an association, but also continue it. It also includes the

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right that the composition of a society shall not be altered by law as to introduce members other than who voluntarily join the society, without the consent of members of the original association.

67. The learned single Judge while referring to the Full Bench would hold the same view. However, in view of the observation made by the Division Bench of this Court in W.P.No.7442 of 1992, etc. Dated 21.12.1995 to the effect that the Special Officer has power to enrol new members, he thought it fit to refer to the larger Bench by the order dated 9.4.2002.

68. At this juncture, it is to be pointed out that the observation made by the Division Bench relating to the same on 21.12.1995 is prior to the Kuttappan's case (A.I.R.2000 S.C.2378). Further, in the said decision of the Division Bench, the same was not the main issue and the said observation was only incidental in the light of the then prevailing circumstances. As a matter of fact, it was only an obiter. In any event, subsequent to the law declared by the Supreme Court in Kuttappan's case, the observation made by the Division Bench as referred to above, has become non-est.

69. In view of the above discussion, this Court is of the view that the Co-operative Societies are constituted to function through the democratic management by the General Body through its elected board which alone is empowered to enrol the new members. If the power of enrolment of new members is conferred on the Special Officer who is appointed for a limited period with limited power to manage the affairs of the society till the constitution of newly elected board,it would amount to conferring powers on the Special Officer for alteration of the composition of the society itself, which affects not only the democratic set up and management of the society, but also the scheme of the Act itself.

70. To sum up:

It is declared that Section 89-A of the Tamil Nadu Co-operative Societies Act is arbitrary, unreasonable, ultra vires and unconstitutional as it would be detrimental to the democratic process and disturbance to the democratic set up affecting the democratic rights of the General Body of the Society, which would amount to the declaration by the Legislature making the earlier judicial declaration in Kuttappan's case (A.I.R.2000 S.C.2378)ineffective and invalid.

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71. The writ petitions are allowed. Consequently, all the pending W.P.M.Ps. and W.V.M.Ps. are closed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

mam

To

1. The Secretary to government,
   State of Tamil Nadu,
   Law Department, Fort St. George,
   Chennai-600 009.

2. The Director of Handlooms & Textiles,
   Kuralagam,
   Chennai-600 108.

3. Aringnar Anna Silk Handlooms Weavers
   Co-operative Production & Sales
   Society Limited, N.K.H-1,
   498-499, Gandhi Road,
   Kancheepuram.

4. Kancheepuram Tiruvallur Silk Handlooms Weavers Co-operative production & Sales Societies Limited, NG.2054, 311/217, Gandhi Road, Kancheepuram.

5. Kancheepuram Silk Handlooms Weavers Co-operative Production & Sales Society Limited, VT.No.G.1099, 443, Gandhi Road, Kancheepuram.

6. Kancheepuram Dr. Kalaignar Karunanidhi Silk Handlooms Weavers Co-operative Production & Sales Society Limited, K.H-4, 88-89, Gandhi Road, Kancheepuram.

7. Kancheepuram Murugan Silk Handloom Weavers Co-operative Production and Sales Society Ltd., NG.1653, door No.79, Gandhi Road, Kancheepuram.

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8. The Secretary to Government
State of Tamil Nadu,
Housing and Urban Development Department,
Fort St. George, Chennai-9.

9. The Registrar of Co-operative
Societies (Housing)
Adyar, Chennai-600 020.

10. Erode Co-operative Housing
Society Ltd., No.9782,
No.54, Balasubbarayalu Street,
Erode-638 001.

11. The Deputy Director of Handlooms
and Textiles,
Kancheepuram.

12. Kancheepuram Vallalar Silk
Handlooms Weavers Co-operative
Production & Sales Society Ltd.,
K.H.54, 133, A.B. Gandhi Road,
Kancheepuram-631 502.

13. The Special Officer
Dr.Ambedkar Salem City Co-operative
House Building Society Ltd.,
No.S.1523, No.50, Causway Street,
Gugai, Salem-6.

14. The Special Officer,
The Thirubuvanam Silk Handloom
Weavers Co-operative Production
and Sales Society Ltd. Z.322,
Thirubuvanam.

15. The Secretary to Government of Tamilnadu
Department of Co-operation Food and
Consumer Protection,
Fort St. George, Chennai-600 009.

16. The Registrar of Co-operative Societies,
N.V.N.Maaligai, Kilpauk, Chennai-10.

17. The Joint Registrar of
Co-operative Societies,
Officer of the Joint Registrar of
Co-operative Societies,

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Karungalpalayam, Erode District.
18. The Deputy Registrar of
Co-operative Societies,
Office of the Registrar of
Co-operative Societies,
Karungalpalayam, Erode District.

19. The Special Officer,
A.A.207, Erasinampalayam Primary
Agriculture Co-operative Bank,
Erasinampalayam, Mulanoor, Erode District.

20. The Secretary to Government,
State of Tamil Nadu, Department of Consumer
Food and Co Operation, Madras 9.

21. The Joint Registrar/Managing Director,
The Erode District Consumers Co operative
Wholesale Stores Ltd., No.124 - A,
Perundurai Road, Erode 11.

22. The special Officer,
Chinthamani
A unit of the Erode District
Consumers Co Operative Wholesale
Stores Ltd., Erode.

23. The Assistant Director
of Handlooms and Textiles,
Coimbatore 641 011.

24. The Special Officer,
No.CH, 106 Palladam Powerloom
weaver Co Operative Production & Sale
Society Ltd., No.6 Trichy Road,
Palladam, Coimbatore 641 664.

25. The Special Officer,
No.CH 12, Somanur Powerloom Weaver
Co Operative Production & Sale Society Ltd.,
Murugan Rice Mill Compound Main Road,
Somanur, Coimbatore 641 668.

26. The Special Officer,
No.CH 126 Sulur Powerloom weaver
Co operative Production & Sale Society
No.232 Trichy Road Sulur Coimbatore.

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27. The Assistant Director of Handlooms & Textiles,
486, Bhavani Road, Erode District.

28. The Special Officer,
No.T.H.95, Pallipailayam Powerloom,
Weavers Co-Operative P & S Society Ltd.,
No.209 RS Road, Pallaipalayam,
Namakkal District 638 006.

29. The Special Officer,
No.CH.174 Sri Bhagavathy Powerloom
Weaver Co Operative Production & Sale
Society Ltd., Kalivalampatti.
Kalvetti Thottam Palladam, Coimbatore 641 664.

30. The Special Officer,
No.CH.140 Arignar Anna Powerloom
Weaver Co- operative production & Sale
Society Ltd., Main Road, Kaipalayam,
Coimbatore District.

31. The Special Officer,
No.EH 186, Siragiru velavan Powerloom
Weaver Co-operative Production & sale Society Ltd.,
No.4/135 Nall Road, Ganapathipalayam PO
Erode District 638 153.

32. The Special Officer,
No.CH 143, Somanur Thiruvalluvar Powerloom
Weaver Co-operative Production & sale Society Ltd.,
Somanur Main Road, Samanur
Coimbatore.

33. The Special Officer,
Inchipatti Powerlooms
Weaver Co-operative Production & sale Society Ltd.,
No.CH.137, Somalapuram 641 663,
Palladam Taluk, Coimbatore District.

34. The Assistant Director of Handlooms and Textiles,
Saibaba Colony,
2nd Cross Street, Bharathi Park,
Coimbatore 11.

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35. The Special Officer,
Kongunadu Powerlooms
Weaver Co-operative Production & sale Society Ltd.,
No.CH 136, Merku Street,
Kalipalayam, Palladam Taluk,
Coimbatore.

36. The Special Officer,
Thiyaki Kumaran Powerlooms
Weaver Co-operative Production & sale Society Ltd.,
No.CH 132, Ayyampalayam,
Somalapuram, 641 663, Coimbatore district.

37. The Special Officer,
Echipatti Kumaran Powerlooms
Weaver Co-operative Production & sale Society Ltd.,
No.CH 137, 1/14-C, Eswaran Koil Street,
Somalapuram 641 663 Coimbatore District.

38. The Assistant Director of Handlooms and Textiles,
426 Bhavani Main Road, Veerappan chatram Erode 4.

39. The Special Officer,
EH 187, Thanthai Periyar Powerloom
Weaver Co-operative Production & sale Society Ltd.,
D.No.35 Kongu Nagar, 1st Street,
Municipal Colony Erode 4.

40. The Special Officer,
EH.No.165, Sakthi power loom
Weaver Co-operative Production & sale Society Ltd.,
No.269, Bhavani Main Road,
Perundurai Erode District.

41. The Special Officer,
Erode power loom
Weaver Co-operative Production & sale Society Ltd.,
No.EH.147, D.No.48 Chozhan Street, Veerappan chatram Erode 4.

42. The Special Officer,
EH.No.191, Ashokapuram powerloom
Weaver Co-operative Production & sale Society Ltd.,
D.No.40/1, Deeran Chinnamalai Street,
Ashokapuram, Veerapanchattiram Erode 4.

43. The Special Officer,
EH.No.155, Kasipalayam Adidravidar power loom
Weaver Co-operative Production & sale Society Ltd.,

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K.K. Nagar Kasipalayam Erode 638 009.

44. The Special Officer,
EH.185 Aringar Anna Powerloom
Weavers CO -Operative Society Ltd.,
Veerapan Chatram, Erode No.4.

+ 3 CCs to Mr.N.Manokaran, Advocate SR NOS.50250, 49992, 49993

+ 7 CCs to Mr.G.Ethirajulu, Advocate SR NO 50288, 50294

+ 5 CCs to Mr.K.Sriram, Advocate SR NO 49902

+ 1 CC to Mr. M.S.Palaniswamy, Advocate SR NO 50105

+ 1 CC to Mr. S.Ravi, Advocate SR NO 50238

+ 1 CC to Mr. D.Balachandran, Advocate SR NO 50001

+ 1 CC to Mr. S.Gomathinayagam, Advocate SR NO 49911

+ 2 CCs to Mr. G. Devadoss, Advocate SR NO 49995, 49996

+ 1 CC to the Government Pleader SR NO 49956

W.P.Nos.13354 to 13358
of 2001 batch
20-12-2005

vc(co)
km,kk,nm,dv,sr,gp/17.1.
Compared by M.Thanga Priya, P. Chandra/

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